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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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In re:  C. W. MINING COMPANY, dba Co-Op Mining Company,  Debtor.	Bankruptcy Case No. 08-20105 RKM (Chapter 11)  <b>DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL <u>and</u> STATEMENT OF ISSUES PRESENTED</b>
GARY E. JUBBER, Trustee,  Plaintiff,  vs.  DEFENDANTS RE HIAWATHA COAL PROCEEDS,  Defendants.	Miscellaneous Adversary Proceeding No. 11-08001  Hon. R. Kimball Mosier  (Electronically Filed)

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Pursuant to Federal Rule of Bankruptcy Procedure 8006, Gary E. Jubber, the Chapter 11 Trustee, and Aquila, Inc. (collectively, the “**Appellants**”) hereby submit this designation of

items to be included in the record on appeal and this statement of issues presented on appeal.

**Designation of Items to Be Included in the Record on Appeal**

The Appellants designate the following items to be included in the record on appeal in this case.

Filing Date	Docket #	Docket Text
03/25/2013	133	Copy of Memorandum Decision and Order on Combined Appeal By District Court Judge Ted Stewart
04/24/2013	135	Trustee's Status Report in Anticipation of April 25, 2013 Status Conference
05/03/2013	136	Transcript regarding Hearing Held 04/25/13
05/29/2013	137	Transcript regarding Hearing Held 05/22/13
06/20/2013	138	Trustee's Memorandum Regarding Decision on Appeal
06/20/2013	139	Memorandum (Aquila's) Regarding Whether the Issues on Remand Can Be Addressed by Summary Judgment at this Stage of the Proceedings
06/20/2013	140	Memorandum of Coal Purchasers Concerning Scope of Mandate
06/20/2013	141	Hiawatha Coal Company, Inc.'s Supplemental Brief Re: District Court Remand
06/20/2013	142	Supplemental Memorandum in Support Filed by Standard Industries, Inc.
07/11/2013	143	Transcript regarding Hearing Held 6/27/13
10/04/2013	155	Trustee's Motion for Partial Summary Judgment that (1) the Severed Coal is Property of the Estate and (2) The Trustee's Claims to the Severed Coal Are Not Precluded by His Prior Recovery of the Mine; and Memorandum in Support

11/04/2013	163	Hiawatha Coal Company, Inc.'s Memorandum in Opposition to Trustee's Motion for Partial Summary Judgment that: (1) the Severed Coal is Property of the Estate and (2) the Trustee's Claims to the Severed Coal are not Precluded by his Prior Recovery of the Mine and In Support of Hiawatha's Cross-Motion for Partial Summary Judgment
11/04/2013	164	Cross-Motion for Partial Summary Judgment Filed by Hiawatha Coal Company
11/11/2013	168	Motion for Summary Judgment Filed by Intermountain Power Agency, Commonwealth Coal Services, Inc., and Tennessee Valley Authority
11/11/2013	169	Memorandum in Support of Memorandum for Summary Judgment, and in Opposition to Trustee's Motion Filed by Intermountain Power Agency, Commonwealth Coal Services, Inc., and Tennessee Valley Authority
11/11/2013	172	Supplemental Memorandum in Opposition to Motion for Summary Judgment filed by Standard Industries, Inc.
11/11/2013	173	Motion for Partial Summary Judgment Filed by C.O.P. Coal Development Company, Fidelity Funding Company, Security Funding, Inc. and Standard Industries, Inc.
11/11/2013	174	COP, et al's Memorandum in Opposition to Trustee's Motion for Partial Summary Judgment and in support of COP, et al's Motion for Partial Summary Judgment
11/11/2013	175	Declaration of Charles Reynolds in Support of Motion for Partial Summary Judgment
11/11/2013	176	Supplemental Memorandum in Opposition to Trustee's Motion for Summary Judgment
12/13/2013	186	Memorandum in Support of Motion for Summary Judgment, Memorandum in Opposition, and Motion for Summary Judgment
12/13/2013	189	Response to Standard Industries' Supplemental Memorandum
01/02/2014	194	Reply to Trustee's Memorandum in Opposition to Hiawatha's Cross-Motion for Partial Summary Judgment
01/02/2014	195	Reply Memorandum in Support of Motion for Summary Judgment

01/02/2014	197	Reply Memorandum in Support of C.O.P., et al's Cross Motion for Summary Judgment
01/15/2014	202	Transcript regarding Hearing Held 01/08/2014
06/20/2014	215	Findings of Fact and Conclusions of Law in Support of Order Denying Trustee's Motion for Partial Summary Judgment, Granting Defendants' Cross-Motion for Summary Judgment, and Dismissing Defendants' Rule 56(d) Motion as Moot
06/20/14	216	Order Denying Trustee's Motion for Partial Summary Judgment, Granting Defendants' Cross-Motion for Summary Judgment, and Dismissing Defendants' rule 56(d) Motion as Moot
07/07/2014	217	Notice of Appeal
07/07/2014	218	Election of Appeal to District court

**Statement of Issues Presented on Appeal**

The Appellants submit the following statement of issues presented on appeal.

1. After the district court "affirm[ed] in part and reverse[d] in part the Bankruptcy Court's decision," did the bankruptcy court err in holding that "the District Court did not reverse any decision of this Court"?
2. Did the bankruptcy court err in ruling that the district court "did not conclude that the coal in situ was property of the estate" where the district court had found that the debtor "held a property interest for purposes of § 541 in the coal in situ" ?
3. Did the bankruptcy court err in failing to determine, as a factual matter, the value of the property right that the district court found the debtor to have held in the coal in situ?
4. Did the bankruptcy court err in deciding the remanded factual issues in the context of summary judgment motions?

5. Did the bankruptcy court err in holding that the estate's exclusive claim is a contract-like claim giving rise to damages where the district court had found that the debtor held, under Utah law, an incorporeal hereditament or intangible property interest in the coal?

6. Did the bankruptcy court err in holding that the estate's property claims against recipients of estate property are barred by an election of remedies?

Dated this 23<sup>rd</sup> day of July, 2014.

RAY QUINNEY & NEBEKER P.C.

/s/ Brent D. Wride

Brent D. Wride

*Proposed Attorneys for Chapter 11 Trustee  
Attorneys for Aquila, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of July, 2014, the foregoing ***DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL and STATEMENT OF ISSUES PRESENTED*** was electronically filed with the Clerk of the Court using the CM/ECF system, and therefore electronic notification was sent to all parties whose names appear on the electronic mail notification list for the Court.

/s/ Patricia Brown